

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

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| ERNEST KIRALY PAINTING & |) | CASE NO. 1:07 CV 3844 |
| DECORATING CO., |) | |
| |) | JUDGE JOHN R. ADAMS |
| Plaintiff, |) | |
| |) | |
| |) | <u>MEMORANDUM OF OPINION</u> |
| v. |) | <u>AND ORDER</u> |
| |) | |
| WILLIAM THOMAS MULDOWNNEY, et al., |) | |
| |) | |
| Defendants. |) | |

On December 18, 2007, plaintiff pro se Ernest Kiraly filed this in forma pauperis action against William Thomas Muldowney and Ann Rose Muldowney. The complaint alleges plaintiff performed construction-related work on defendants' property, and that defendants owe plaintiff \$4,626. The complaint further indicates that plaintiff sued defendants in state court, but that the action was unfairly dismissed in May 2007. Plaintiff asks this court to "over-turn the Lower Courts ruling in favor of defendants" For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915(e).

Although pro se pleadings are liberally construed, Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam); Haines v. Kerner, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable

basis in law or fact.¹ Neitzke v. Williams, 490 U.S. 319 (1989); Lawler v. Marshall, 898 F.2d 1196 (6th Cir. 1990); Sistrunk v. City of Strongsville, 99 F.3d 194, 197 (6th Cir. 1996).

Without regard to the whether plaintiff may have stated an otherwise valid claim for relief, it is clear on the face of the complaint that there is not complete diversity of citizenship of the parties, and that no federal question is implicated by plaintiff's claim. Further, this court simply does not have authority to perform appellate review of state court judgments. This action must therefore be dismissed for lack of jurisdiction. See Caudill v. North America Media Corp., 200 F.3d 914, 916 (6th Cir. 2000).

Accordingly, the request to proceed in forma pauperis is granted and this action is dismissed without prejudice under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Date: March 31, 2008

S/John R. Adams
JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

¹ A claim may be dismissed sua sponte, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. McGore v. Wigglesworth, 114 F.3d 601, 608-09 (6th Cir. 1997); Spruytte v. Walters, 753 F.2d 498, 500 (6th Cir. 1985), cert. denied, 474 U.S. 1054 (1986); Harris v. Johnson, 784 F.2d 222, 224 (6th Cir. 1986); Brooks v. Seiter, 779 F.2d 1177, 1179 (6th Cir. 1985).